

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION**

IN RE: PETITION OF
NAUTILUS SOLAR ENERGY, LLC
FOR DECLARATORY JUDGMENT ON
RHODE ISLAND GENERAL LAWS
§ 39-26.4, THE NET METERING ACT

Docket No. 5122

MEMORANDUM

Green Development, LLC, WED GW Solar, LLC, WED Portsmouth One, LLC, GD Hopkinton Main I, LLC, WED Shun I, LLC, WED Green Hill, LLC (collectively “Green”) provide this memorandum in support of its motion to intervene and in support of the Petition for Declaratory Judgment in this docket regarding the interpretation of Rhode Island’s net metering law and National Grid’s (d/b/a/ Narragansett Electric Company) net metering tariff. It is unusual for public comment to be due before motions to intervene are decided. That unusual and unprecedented procedural schedule fundamentally leaves intervenors in a position of not knowing their deadline for filing substantive comments. If an intervenor waits for decision on its motion to intervene, it could lose the opportunity to file timely comments. While Green very strongly believes it meets the standard for intervention in this docket, it is put in the position of having to respectfully request that this filing be considered public comment (which comment is due today) if its motion to intervene is denied. If Green is granted intervention, then it respectfully requests the ability to amend and refile this memorandum if/as it deems appropriate by the intervenor’s filing deadline of March 10.

In its Petition for Declaratory Judgment, the Petitioner Nautilus Solar Energy, LLC asks the Public Utilities Commission to declare that “a single eligible net-metering system may be owned and operated by a renewable-generation developer on behalf of more than one public

entity, educational institution, hospital, nonprofit or multi-municipal collaborative” and “that a group of public housing authorities are eligible to enter into a multi-municipal collaborative for the purposes of entering a net-metering financing arrangement.” Petition, at 8–9. Green supports the relief sought in Petitioner’s Declaratory Judgment. There is no ambiguity in the statutory authorization for more than one eligible customer to enter net metering finance arrangements with a single net metering system. The statute and commission precedent is also unambiguous that a group of public housing authorities can form a multi-municipal collaborative. Green relies on the Tariff’s plain and ordinary meaning of its term to reach this conclusion.¹

The Net Metering Act’s purpose, in part, is to “facilitate and promote installation of customer-sited, grid-connected generation of renewable energy [and] to support and encourage customer development of renewable energy generation systems” R.I. Gen. Laws § 39-26.4-1. Many projects developed by Green and others have reasonably relied on the Net Metering Act and National Grid’s application of its Tariff to allow more than one net metering finance arrangement on an eligible net metering system. A change to the law would counter the plain language and purpose of Rhode Island’s net metering law and cause severe disruption to many existing and prospective economic interests and to Rhode Island’s economy.

I. One eligible net metering system can operate for multiple public entities.

When read together, the statutory definitions of Eligible Net Metering System and Eligible Net Metering System Site make it clear that more than one public entity may enter a net metering finance arrangement with an eligible net metering system. The “Eligible Net Metering System” definition states “any Eligible Net Metering Resource . . . owned and operated by a

¹ See *Olamuyiwa v. Zebra Atlantek, Inc.*, 45 A.3d 527, 534 (R.I. 2012) (“It is a well-established principal of statutory interpretation that ‘when language of a statute is clear and unambiguous . . . give the words of the statute their plain and ordinary meanings.’”) (internal quotations omitted).

renewable generation developer on behalf of a Public Entity, Educational Institution, Hospital, Nonprofit, or Multi-municipal Collaborative through a Net Metering Financing Arrangement . . . shall be treated as an Eligible Net Metering System, and all delivery service accounts designated by the Public Entity, Educational Institution, Hospital, Nonprofit, Multi-Municipal Collaborative . . . shall be treated as accounts eligible for net metering within an Eligible Net Metering System Site.” R.I. Gen. Laws § 39-26.4-2(5) (emphasis added). The definition for “Eligible Net Metering System Site” clarifies “Eligible Net Metering System” through two exceptions for systems owned and operated by a developer on behalf of eligible net metering customers. First, “Except for an Eligible Net Metering System owned by or operated on behalf of a Public Entity, Educational Institution, Hospital, Nonprofit, or Multi-Municipal Collaborative through a Net Metering Financing Arrangement . . . the purpose of this definition is to reasonably assure that energy generated by the Eligible Net Metering System is consumed by net metered electric delivery service account(s) that are actually located in the same geographical location as the Eligible Net Metering System.” *Id.*, § 39-26.4-2(6). Second, “Except for an Eligible Net Metering System owned by or operated on behalf of a Public Entity, Educational Institution, Hospital, Nonprofit, or Multi-Municipal Collaborative through a Net Metering Financing Arrangement . . . all of the Net Metered Accounts at the Eligible Net Metering System Site must be the accounts of the same customer of record.” Additionally, “[a]s long as the Net Metered Accounts meet the requirements set forth in this definition, there is no limit on the number of delivery service accounts that may be net metered within the Eligible Net Metering System Site.” *Id.*

Under the plain language of these definitions, more than one Public Entity, Educational Institution, Hospital, Nonprofit, or Multi-Municipal Collaborative may enter net metering

finance arrangements with one Eligible Net Metering System. The statute and tariff do authorize multiple Net Metering Finance Arrangements for one Eligible Net Metering System and do not require that the eligible off-taker meters must be accounts of the same customer of record. Nor is there any limit on the number of delivery service accounts that can be net metered from an Eligible Net Metering System site. The two “except” terms found in the “Eligible Net Metering System Site” definition give broad latitude in completing a Schedule B designating eligible net metering customer accounts, with no requirement that the accounts belong to the same customer of record and no limit to the number of accounts that can be designated. The Petition does not make reference to the two critically important exceptions in the definition of Eligible Net Metering System Site which resolve any ambiguity with regard to the question addressed to the Commission.

II. Public Housing Authorities Can Clearly Enter Multi-Municipal Collaborative Agreements Under the Net Metering Tariff.

We agree with Petitioner that the statute and PUC precedent is clear that public housing authorities qualify as municipalities that could enter collaborative agreements to receive offtake credits. The Tariff defines “Municipality” as “any Rhode Island town or city, including any agency or instrumentality thereof, with the powers set forth in Title 45 of Rhode Island General Laws.” *Id.*, § 39-26.4-2(11). Following the Tariff’s instructions, Title 45 defines “Municipalities” as follows:

- R.I.G.L. § 45-25-3(1) - “Authority” or “housing authority” means a public body and a body corporate and politic, organized in accordance with the provisions of chapters 25 and 26 of this title for the purposes, with the powers, and subject to the restrictions established in chapters 25 and 26 of this title. <https://law.justia.com/codes/rhode-island/2013/title-45/chapter-45-25/section-45-25-3/>
- R.I.G.L. § 45-26-2(a) - In each town of the state there is created a public body corporate and politic to be known as the “housing authority” of the town (hereafter

called "town authority"); provided, that the town authority does not transact any business or exercise its powers until or unless the town council of the town, by proper resolution, determines at any time that there is need for a town authority to function in the town. <https://law.justia.com/codes/rhode-island/2013/title-45/chapter-45-26/section-45-26-2/>

As the definition of “Municipality” in the Tariff directly incorporates municipal agencies granted authority through Title 45 of the Rhode Island General Laws, Housing Authorities are unambiguously included in this definition.

The Statute then provides that municipalities are allowed to enter into contractual agreements to form a “Multi-Municipal Collaborative.” It reads: “‘Multi-Municipal Collaborative’ shall mean a group of towns and/or cities that enter into an agreement for the purpose of co-owning a renewable generation facility or entering into a Net Metering Financing Arrangement.” *See* R.I. Gen. Laws § 39-26.4-2(10). By the plain meaning of the statute, a group of public housing authorities may clearly form a Multi-Municipal Collaborative” and enter one net metering finance arrangement, designating all electric delivery service accounts on one Schedule B.

III. Conclusion

The exceptions for public entities, non-profits, municipalities, and multi-municipal collaboratives allow for broad participation in net-metering through the designation of unlimited delivery service accounts for one or more customers of record in one or more “net metering financing arrangement” tied to one “eligible net-metering system.” Public housing authorities

qualify as municipalities that could enter collaborative agreements to receive offtake credits.

Respectfully submitted,

GREEN DEVELOPMENT, LLC, WED
GW SOLAR, LLC, WED PORTSMOUTH
ONE, LLC, GD HOPKINTON MAIN I,
LLC, WED SHUN I, LLC, WED GREEN
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CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2021, I sent a true copy of this document by electronic mail to the PUC and the service list and mailed the original pleading and 9 photocopies to the PUC.



Seth H. Handy

